

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

JUN - 2008

ALFRED A. SANDOVAL,

PLAINTIFF

VS.

D. BARNEBURG, et. al.,

DEFENDANTS

NO. 08-0865 RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAMOTION FOR STAY OF AND PARTIAL  
VACATE OF DISTRICT COURT ORDER  
PURSUANT TO RULE 15 (a) OF FEDERAL  
RULES OF CIVIL PROCEDURE, AND RULE  
7-1.2 OF DISTRICT LOCAL RULESDATE : TO BE SUBMITTED  
TIME :  
PLACE :

PLAINTIFF DOES NOW NOTIFY THIS HONORABLE COURT OF THIS SUBMITTED MOTION TO  
BE CONSIDERED BY THIS COURT ON THIS DATE : \_\_\_\_\_ DETERMINED BY THE  
COURT, AND AT THIS TIME : \_\_\_\_\_. THIS MOTION IS SUBMITTED PURSUANT TO  
RULE 15 (a) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND RULE 7-1.2, 10 OF THE  
LOCAL RULES.

PLAINTIFF ASSERTS THIS COURT'S DISMISSAL OF PARTIES SHOULD HAVE BEEN WITH  
LEAVE TO AMEND. AND AS A MATTER OF COURSE ALLOWED PLAINTIFF TO AMEND HIS  
COMPLAINT PURSUANT TO RULE 15 (a), AND ALLOW FOR DISCOVERY PROCESS IN ORDER  
TO DEVELOP HIS COMPLAINT BEFORE ORDERING DEFENDANTS TO FILE A DISPOSITIVE  
MOTION PURSUANT TO RULE 12 OR 56. PLAINTIFF SUBMITS TO THIS COURT FOR ITS  
VIEWING AN ADEQUATE DESCRIPTION OF HIS CONTEMPLATED REVISION OF COMPLAINT VIA  
AMENDMENT PURSUANT TO RULE 15 (a). IN ORDER TO ESTABLISH COGNIZABLE CLAIMS  
AS TO DEFENDANTS DISMISSED BY THIS COURT. IN ADDITION, PLAINTIFF WISHES TO ADD  
PARTIES TO COMPLAINT, ALSO THIS COURT MADE NO DETERMINATION AS TO SEVERAL DEFEN-  
DANTS IN ORIGINAL COMPLAINT, NAMELY: G. KELLY, G. PARKER, M. MCLEAN,  
J. KRAVITZ, J. DIMMICK, C. GOROSPE AND JOHN DEES 1-4.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

A PARTY MAY AMEND A PLEADING WITHOUT LEAVE OF COURT OR CONSENT OF

OPPOSING PARTIES UNDER RULE 15 OF THE RULES OF FEDERAL CIVIL PROCEDURE WASH-  
INGTON VS. NEW YORK CITY BOARD OF ESTIMATE 709 F.2d 792, 795 (2ND CIR 1983) CERT.  
 DENIED, 464 U.S. 1013 (1983). DISMISSING A CLAIM AGAINST DEFENDANTS FOR FAILING  
 TO STATE A COGNIZABLE CLAIM FOR RELIEF, SUCH DISMISSAL WITHOUT LEAVE TO AMEND IS NOT  
 PROPER. SCHNEIDER VS. CALIFORNIA DEPT OF CORRECTIONS 161 F.3d 1194 (9TH CIR. 1998).  
 "A PRO SE LITIGANT MUST BE GIVEN LEAVE TO AMEND HIS COMPLAINT UNLESS IT IS 'ABSOL-  
 UTELY CLEAR THAT THE DEFICIENCIES OF THE COMPLAINT COULD NOT BE CURED BY AMEND-  
 MENT'" NOLL VS. CARLSON 809 F.2d 1446 (9TH CIR 1987).

ALLOWING THE ADDITION OF OUTSTANDING DEFENDANTS TO A COMPLAINT FOR GOOD  
 CAUSE SHOWN IS PROPER WHEN DEFENDANTS WOULD BE PREJUDICED STANLEY WORKS VS.  
SNYDER GENERAL CORP. 781 F.SUPP. 659 (E.D. CAL. 1990), UNITED ROYERS & ALLIED  
TRADES NO. 40 VS. INS. CORP. OF AMERICA 919 F.2d 1398 (9TH CIR. 1990).

MAKING OUTSTANDING DEFENDANTS A PARTY TO AN ACTION IS PROPER AND THROUGHT DIS-  
 CVERY WILL PRODUCE EVIDENCE SUPPORTING OF PLAINTIFF'S CLAIM. U.S. VS. WATSON INS.  
COMPANIES 755 F.SUPP. 906 (N.D. CAL. 1991); WILBORN VS. ESCALVORON 789 F.SUPP.  
 1328 (9TH CIR 1989).

THE BROAD PURPOSE OF THE DISCOVERY PROCEDURE IS TO DEBENT MUTUAL KNOW-  
 LEDGE BEFORE TRIAL OF ALL RELEVANT FACTS GATHERED BY BOTH PARTIES SO THAT EITHER  
 PARTY MAY COMPEL THE OTHER TO DISCLOSE WHATEVER FACTS ARE IN THEIR POSSESS-  
 ION HICKMAN VS. TAYLOR 67 S. CT. 385, 329 U.S. 495, 91 L. ED 451. THE SPIRIT  
 OF THE FEDERAL RULES REQUIRES THE ALLOWANCE OF DISCOVERY BEFORE TRIAL  
 WHENEVER POSSIBLE QUEEN'S THEATRE CO. VS. WARNER BROS. PICTURES 35 F.  
 SUPP. 949; DIXON VS. SUNSHINE BUS LINES 27 F.SUPP. 797

PLAINTIFF SUBMITS FOR THIS COURT VIEWING PER RULE 15 (2) REFERENCED PORT-  
 IONS OF PROPOSED AMENDED PLEADING AS TO DISMISSED DEFENDANTS:

JAMES TILTON

VIA AMENDED COMPLAINT PLAINTIFF WILL STATE A COGNIZABLE CLAIM THAT JAMES TILTON'S



1) AS DIRECTOR OF CORK, CONCERNING PELICAN BAY STATE PRISON (PBSP) SECURITY  
 HOUSING UNITS (SHU), WHERE ALLEGED PRISON GANG MEMBERS OR ASSOCIATES ARE  
 ADMINISTRATIVELY SEGREGATED FROM GENERAL POPULATION. HE WAS AWARE OF AND  
 SANCTIONED PBSP OFFICIALS CREATING A "GANG" CORRIDOR.

2) THAT THE DIRECTOR SANCTIONED THE RUNNING OF THE PBSP-SHU GANG CORRI-  
 DOR AS A HIGHER SECURITY THAN THE REST OF PBSP-SHU AND UNDER THE CONTROL  
 OF THE INSTITUTIONAL GANG INVESTIGATION UNIT (I.G.I.)

3) WAS AWARE OF AND SANCTIONED NEW UNDERGROUND POLICIES CONCERNING  
 MAIL, VISITING, MEDICAL, AND GENERAL DAILY MOVEMENT OF PRISONERS HOUSED IN THE  
 GANG CORRIDOR FOR PURPOSE OF ISOLATING FROM OTHER PBSP-SHU PRISONERS.

ROBERT A. HOREL

VIA AMENDED COMPLAINT PLAINTIFF WILL STATE A COGNIZABLE CLAIM THAT ROBERT A. HOREL :

1. AS WARDEN OF PBSP AND HIS PENOLOGICAL CONCERNS AS TO ITS SAFETY AND SECUR-  
 ITY. WAS AWARE OF AND SANCTIONED THE CREATION OF THE "GANG" CORRIDOR AS HIGHER  
 SECURITY UNITS THAN THE REST OF PBSP-SHU AND UNDER THE CONTROL OF THE I.G.I. UNIT.

2. WAS AWARE AND SANCTIONED NEW UNDERGROUND POLICIES CONCERNING MAIL,  
 VISITING, MEDICAL CARE, AND THE GENERAL DAILY MOVEMENT OF GANG CORRIDOR PRISON-  
 ERS FOR PURPOSE OF ISOLATING FROM OTHER PBSP-SHU PRISONERS.

3. WAS AWARE OF AND SANCTIONED THE APPLICATION OF THE NEW POLICIES BY THE  
 I.G.I. UNIT STAFF.

4. WAS AWARE OF AND SANCTIONED THE FEBRUARY 2, 2007 SPECIAL OPS TASK FORCE.

5. VIA ADMINISTRATIVE APPEAL CHAIRS WAS AWARE OF THE INADEQUATE MEDICAL  
 ATTENTION/TREATMENT TO PLAINTIFF CONCERNING SERIOUS MEDICAL PROBLEMS.

6. VIA ADMINISTRATIVE APPEAL (602) RESPONSE WAS AWARE THAT PLAINTIFF WAS  
 SUBJECTED TO BIAS AND UNFAIR REVIEWS OF RIGHT TO PETITION THE GOVERNMENT AS TO:

A. SUBJECTION TO RETALIATORY EXCESSIVE USE OF FORCE FOR FILING GRIEVANCES;

B. DENIAL OF MAIL IN RETALIATION FOR FILING GRIEVANCES;

C. DENYING ADEQUATE MEDICAL ATTENTION/TREATMENT FOR SERIOUS MEDICAL PROBLEMS.

C. SCAVETTA

VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT C. SCAVETTA:

1. AS ASSOCIATE WARDEN OF PRSP WAS IN CHARGE OF PRSP-SHU AND AWARE OF THE CREATION OF THE "GANG" CORRIDOR
2. AWARE OF AND SANCTIONED THE RUNNING OF THE GANG CORRIDOR AS A HIGHER SECURITY UNITS THAN THE REST OF PRSP-SHU UNDER THE CONTROL OF THE I.B.I. UNIT.
3. WAS AWARE OF AND SANCTIONED NEW UNDERGROUND POLICIES CONCERNING MAIL, VISITING, MEDICAL CARE, AND GENERAL DAILY MOVEMENT OF GANG CORRIDOR PRISONERS FOR PURPOSE OF ISOLATING FROM OTHER PRSP-SHU PRISONERS.
4. WAS AWARE OF AND SANCTIONED THE EXERCISE OF NEW POLICIES BY I.B.I. UNIT.
5. WAS AWARE OF THE FEBRUARY 2, 2007 SPECIAL OPS TASK FORCE AND THE SUBJECTING OF PLAINTIFF TO EXCESSIVE USE OF FORCE.

R. MARQUEZ

VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT R. MARQUEZ:

1. AS A CAPTAIN IN THE OFFICE OF CORRECTIONAL SECURITY (O.C.S.) WAS IN CHARGE OF THE FEBRUARY 2, 2007 SPECIAL OPS TASK FORCE AND RESPONSIBLE FOR THE ACTIONS OF SUBORDINATES.
2. WAS AWARE OF AND SANCTIONED 'O REYES' ATTEMPT TO OBTAIN PHOTOS OF PLAINTIFF AND OTHER PRISONERS FOR HIS PERSONAL COLLECTION.
3. WAS AWARE OF I.B.I. STAFF SINGLEING OUT PLAINTIFF AND SUBJECTING HIM TO RETALIATORY EXCESSIVE USE OF FORCE

R. PIMENTEL

VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT R. PIMENTEL:

1. BETWEEN FEBRUARY 2, 2007 TO DECEMBER 2007 REVIEWED NO LESS THAN (4) 602 CRIMINALS: PRSP 06-02070, PRSP 07-00389, PRSP 07-01271 AND PRSP 07-01299.
2. WAS AWARE THAT IN 602 NO. 06-02070 I.B.I. STAFF FAILED TO FOLLOW REGULATIONS AND ALLOW PLAINTIFF TO SEND BACK TO A SENDING CORRESPONDANT MAIL ITEMS DISAPPROVED.



3. IN REVIEW OF 602 NO. 06-02070 NEGLECTED TO PERSONALLY VIEW MAIL ITEMS DISALLOWED BY I.B.I. STAFF AND ACCEPTING I.B.I. ACTION AS VALID AND CORRECT.

4. WAS AWARE THAT LT. PEDROSO REVIEWED AT SECOND LEVEL 602 NO. 07-00389, AND CONDUCTED INVESTIGATION INTO RETALIATORY EXCESSIVE USE OF FORCE.

5. WAS AWARE THAT SECOND LEVEL 602 REVIEW WAS NOT A NEUTRAL REVIEW.

6. WAS AWARE THAT A MEANINGFUL INVESTIGATION INTO EMPLOYEE MISCONDUCT WAS NOT CONDUCTED.

7. WAS AWARE THAT THIRD LEVEL 602 REVIEW WAS ARGENTLY PERSONAL REVIEW OF ALL RELEVANT REPORTS

8. WAS AWARE AT TIME OF HIS REVIEW THAT PLAINTIFF HAD A VALID CLAIM OF RETALIATION ON I.B.I. STAFF BASED ON PREVIOUSLY FILED 602 COMPLAINTS.

9. WAS AWARE THAT SECOND LEVEL REVIEW CONCERNED TWO 602'S NOS 07-01271 AND 07-01299. IN PART, ONE RAISES A CLAIM OF MAIL SOLEN AND WITHHELD. THE OTHER, A CLAIM OF PLACING FALSE INFORMATION IN PERSON FILE.

10. WAS AWARE BOTH 602 COMPLAINTS CLAIMED RETALIATION AS THE BASIS FOR THE ACTIONS OF I.B.I. STAFF.

11. WAS AWARE HE HAD REVIEWED PREVIOUS PLAINTIFF'S 602'S RISING RETALIATION BY I.B.I. STAFF (SUPRA, NO. 06-02070, 07-00389)

12. WAS AWARE HIS THIRD LEVEL REVIEW ADDRESSED ONLY 602 NO. 07-01299-  
J. F. PEDROSO

VIA HIS REPORT CONCLUDES WILL STATE A COGNIZABLE CLAIM THAT J. F. PEDROSO:

1. CONDUCTED TWO SEPARATE VIDEO INTERVIEWS WITH PLAINTIFF REGARDING THE SUBJECTION TO EXCESSIVE USE OF FORCE.

2. HIS REPORT SUBMITTED REGARDING THE FEBRUARY 2, 2007 EXCESSIVE USE OF FORCE WAS INCOMPLETE.

3. CONDUCTED A MARCH 28, 2007 SECOND LEVEL REVIEW NO. 07-00389 ON CLAIM OF EXCESSIVE USE OF FORCE

4. WAS AWARE THAT HIS TWO INTERVIEWS WITH PLAINTIFF PRECLUDED HIM FROM

1 PARTICIPATING AS SECOND LEVEL REVIEWER OF 602 NO. 07-00389.

2 5. WAS AWARE THAT PARTICIPATING I.B.I. STAFF IN THE FEBRUARY 2, 2007 EXCESS-  
3 IVE USE OF FORCE HAD PREVIOUSLY BEEN NAMED IN OTHER 602 GRIEVANCES.

4 R.R. KERSH

5 VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT R.R. KERSH:

6 1. AS A LT., ON FEBRUARY 2, 2007 PARTICIPATED IN THE SPECIAL OPS TASK FORCE  
7 IN A SUPERVISORY CAPACITY.

8 2. WAS AWARE OF THE EXCESSIVE USE OF FORCE BY I.B.I. STAFF ON PLAINTIFF.

9 LT. FERGUSON

10 VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT LT. FERGUSON:

11 1. AS A LT., ON FEBRUARY 2, 2007 PARTICIPATED IN THE SPECIAL OPS TASK FORCE IN A  
12 SUPERVISORY CAPACITY.

13 2. WAS AWARE OF THE EXCESSIVE USE OF FORCE BY I.B.I. STAFF ON PLAINTIFF.

14 C. HALL

15 VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT C. HALL:

16 1. FROM JUNE 2007 TO SEPTEMBER 2007 AT THIRD LEVEL REVIEW, REVIEWED AND  
17 LESS THAN FOUR 602 GRIEVANCES ON PLAINTIFF'S MEDICAL CLAIMS: PBSP 07-00203;  
18 PBSP 07-00131; PBSP 07-00866; AND PBSP 07-00717

19 2. WAS AWARE THREE OF THE 602 CLAIMS ARE DIRECTED AT FNP S. RISENHOWER,  
20 BUT THAT R.N. T. FLOWERS RESPONDED AT INFORMAL LEVEL INSTEAD OF THE FNP.

21 3. IN 602 07-00203 WAS AWARE PLAINTIFF HAS BEEN PUT ON A CONTINUOUS  
22 REGIMEN OF MEDICATIONS BY FNP S. RISENHOWER FOR SKIN CONDITION

23 4. WAS AWARE THAT PLAINTIFF HAD REPEATEDLY REQUESTED AND DENIED TO SEE A  
24 SKIN SPECIALIST.

25 5. WAS AWARE THAT ON FEBRUARY 2, 2007 A CT SCAN BY AN OUTSIDE HOSPITAL  
26 REVEALED A SKIN INFECTION

27 6. IN 602 07-00131 WAS AWARE THAT A REPORT ON A COLONOSCOPY TAKEN WAS  
28 INCOMPLETE.



7. WAS AWARE THAT MEDICATIONS PRESCRIBED FOR PLAINTIFF'S CROHN'S DISEASE DO NOT WORK. AND THAT REQUESTS FOR SPECIAL DIET HAVE CONSISTENTLY BEEN DENIED.

8. WAS AWARE THAT PLAINTIFF AT FEDERAL LEVEL RAISED CLAIMS OF ADA VIOLATIONS AS TO INADEQUATE MEDICAL TREATMENT FOR CROHN'S DISEASE.

9. IN THIS THIRD LEVEL REVIEW IT WAS CONSIDERED ADEQUATE PERSONALLY VIEWING ANY MEDICAL DOCUMENTATION.

10. AS TO 602 NO. S 07-00866 AND 07-00717 WAS AWARE THAT PHYSICAL THERAPY WAS REQUESTED AND DENIED.

11. WAS AWARE THAT ON FEBRUARY 2, 2007 PLAINTIFF SUFFERED INJURIES AS A RESULT OF SUBJECTION TO EXCESSIVE USE OF FORCE.

12. WAS AWARE THAT PLAINTIFF RAISE CLAIM OF MEDICAL STAFF INTENTIONALLY DELETING PORTIONS OF MEDICAL INTERVIEWS.

#### D. HAWKES

VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT D. HAWKES:

1. WAS IN CHARGE OF THE I.B.I. UNIT PRIOR TO AND AT THE TIME OF THE FEBRUARY 2, 2007 SPECIAL OPS TASK FORCE.

2. WAS AWARE THAT THE I.B.I. UNIT EXCLUSIVELY OVERSEES THE MAIL, BOTH INCOMING AND OUTGOING FOR PRISONERS IN THE "BAND" CORRIDOR.

3. CONDUCTED SECOND LEVEL REVIEWS IN TWO 602 GRIEVANCES FILED BY PLAINTIFF AGAINST I.B.I. UNIT FOR DENYING AND LOSING MAIL.

#### G. PARKER

VIA AMENDED COMPLAINT WILL STATE A COGNIZABLE CLAIM THAT G. PARKER:

1. DURING THE FEBRUARY 2, 2007 SPECIAL OPS TASK FORCE WAS USED TAPING PLAINTIFF'S ENTRANCE INTO THE HOLDING CELLS AREA.

2. WHILE PLAINTIFF WAS BEING ESCORTED OUT OF THE HOLDING CELLS AREA AND PRIOR TO BEING ATTACKED, G. PARKER WAS CONTROLLING A DIGITAL CAMERA

3. WITNESSED THE PHYSICAL ATTACK ON PLAINTIFF BY I.B.I. STAFF.

4. DURING THE PHYSICAL ATTACK DID TAKE PHOTO OF PLAINTIFF.

### CONCLUSION

FOR THE REASONS STATED HEREIN PLAINTIFF PRAYS THIS COURT  
WILL SET TO MAY 7, 2008 COURT ORDER AND VACATE THE DISMISSAL  
OF NAMED DEFENDANTS. ALLOW PLAINTIFF TO AMEND COMPLAINT AND  
CONDUCT PROPER DISCOVERY ON ALL DEFENDANTS. VACATE ITS ORDER  
THAT DEFENDANTS CONDUCT DISPOSITIVE MOTIONS. AND ALLOW FOR  
OUTSTANDING DEFENDANTS TO BE ADMITTED BY THIS COURT.

### VERIFICATION

I, ALFREDO SANDOVAL HAVE READ THE AFOREMENTIONED AND  
STATE THE CONTENTS TO BE TRUE AND CORRECT. THIS I DO DECLARE  
UNDER THE PENALTY OF PERJURY. EXECUTED THIS DAY AT PELLON  
BAY STATE PRISON, CROSBY CITY CALIFORNIA.

DATED. 5/28<sup>TH</sup> 2008 /s/ Alfredo Sandoval

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